

CASE NO.

19-6537

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER EVERSON-PETITIONER

VS

THERESA LANTZ,

CONNECTICUT COMMISSIONER OF CORRECTIONS, ET AL-RESPONDENTS

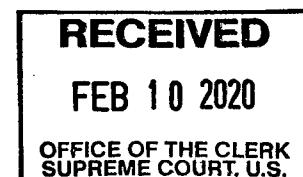
ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

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PRO SE PETITIONER

February 5, 2020



LIST OF PARTIES AND RELATED CASES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Christopher Everson- Petitioner

John Armstrong, former Connecticut Commissioner of Corrections –Respondent

Theresa Lantz, former Connecticut Commissioner of Corrections-Respondent

Connecticut Commissioner of Corrections, Respondent

Nelvin Levester, Respondent

Robert Carbone, Respondent

Related cases are as follows:

EVERSON V. LANTZ, Docket No. 3:04-cv-387 (RNC) Connecticut District Court, Judgment entered

February 4, 2009

EVERSON V. SEMPLE, Docket No. 3:16-cv-77 (RNC) Connecticut District Court, Judgment

entered September 7, 2016

EVERSON V. LANTZ, Docket No. 09-0903-cv Second Circuit Court of Appeals, Judgment entered

June 9, 2009

EVERSON V. SEMPLE, Docket No 16-3381 cv Second Circuit Court of Appeals, Judgment entered

on September 8, 2017

EVERSON V. COMM'R OF CORRECTIONS, Docket No. 19-882 cv Second Circuit Court of Appeals,
Judgment entered August 6, 2019

EVERSON V. SEMPLE, Case No. 17-7650 cv Supreme Court of The United States, Cert denied on
February 4, 2020

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Certificate of Compliance

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CERTIFICATE OF A PARTY UNREPRESENTED BY COUNSEL

Pursuant to the Rules of the Supreme Court of the United States Rule 44.2, this petition is limited to substantial grounds not previously presented, this petition is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay. The Circuit Court of Appeal's decision denied the Petitioner his substantial fundamental constitutional right of "access to the courts" pursuant to the 1st, 5th, and 14th Amendments: and to petition the government for a redress of grievances, no person shall be deprived of life, liberty or property without due process of law. Equal Protection of the Laws

February 5, 2020



Christopher Everson
Christopher Everson, Pro se petitioner

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STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

28 U.S.C. section 1651 (a) provides:

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. section 1915 subsection (a)(1) and subsection (e)(2)(B)(i) and (ii) provides:

Section 1915 Proceedings informa pauperis; subsection (a) (1) Subject to subsection (b), any court of the United States may authorize the commencement prosecution or defense of any suit, action or proceeding , civil or criminal, or appeal therein, without prepayment of fees, or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor , Such affidavit shall state the nature of the action defense or appeal and affiant's belief that the person is entitled to redress; Subsection (e)(2)Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that- (B) the action or appeal- (i) is frivolous or malicious (ii) fails to state a claim on which relief may be granted;

42 U.S.C. section 1983 provides:

Civil Action for Deprivation of rights: Every person who, under color of any statute, ordinance regulation, custom, or usage of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other persons within the jurisdiction

thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

First Amendment Provides:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise of thereof, or abridging the freedom of speech, or of the free press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Fifth Amendment Provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use, without just compensation

Fourteenth Amendment Provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside, No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Article IV section 2 paragraph 1 of the Constitution provides:

The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

STATEMENT OF THE CASE

In 1984 the petitioner here began employment with the Connecticut Department of Corrections (hereinafter referred to as DOC). The petitioner was a stellar employee with an outstanding work record. In March of 2001 the petitioner was terminated from his employment with DOC, in March 2004 the petitioner by his Attorney, filed a lawsuit in Connecticut District Court against DOC, under Title 42 U.S.C. section 1983 alleging his termination by DOC violated numerous Constitutional Rights. The case was dismissed in February 2009 by the District Court after two separate summary judgments.

In March 2009 the petitioner filed a timely appeal of the District Court's decision with the Second Circuit Court of Appeals, the petitioner was incarcerated when he filed his appeal, the petitioner was incarcerated from May 2008 until April 2012 for a matter unrelated to the termination or the lawsuit, the petitioner's appeal cited that among other things: at summary judgment the plaintiff/petitioner's admissible evidence i.e. "the names of his similarly situated comparators" were excluded from the examination of the February 2009 ruling and order "case doc #131" for summary judgment, that is to say that in the petitioner's motion for summary judgment "case doc's # 121, 123 and 124, the petitioner listed the names of twenty eight named comparators, but the February 2009 ruling and order in error did not examine the plaintiff's named comparators, the ruling and order" doc # 131" examined a list of names from the defendant's motion for summary judgment and in error identifies and refers to the defendant's evidence i.e. names of individuals provided by the defendant as being the

plaintiff's named comparators, the plaintiff/petitioner's named comparators appear to have been overlooked.

While the petitioner was incarcerated "during the time of his appeal" he was not receiving his legal mail, specifically, notices sent to the petitioner from the Court of Appeals were not delivered to the petitioner, because the petitioner was not receiving his legal mail the petitioner was "effectively unable to protect his appeal and unable to monitor his appeal", this resulted in the petitioner missing important filings and missing important court imposed deadlines. The appeal was dismissed on June 9, 2009 after the petitioner failed to respond to two notices sent to him from the Court of Appeals, both notices instructed the petitioner to complete and return to the court an enclosed "in forma pauperis motion" forms for New York State, the petitioner did submit with his notice of appeal, a Connecticut "in forma pauperis motion" granted by the Connecticut District Court "case doc # 140". The petitioner was not aware that his appeal was dismissed. The petitioner learned that his appeal had been dismissed when he received a "bill of cost, case doc# 142" from the defendant's attorney. The petitioner immediately filed a request to have the case reopened, denied. For the remainder of the petitioner's incarceration his legal mail was often withheld. The petitioner filed Writ of Certiorari with this court, denied "as filed untimely", the untimeliness was attributed to ongoing delays of the petitioners incoming mail, the petitioner filed request for rehearing, denied, the petitioner filed an Extraordinary Writ, in late 2011 it was denied.

On or about April 3, 2012 the petitioner was released from his incarceration, on or about the same day as the petitioner's release from incarceration the petitioner met with an Attorney, that Attorney agreed to represent the petitioner in his wrongful termination case against DOC.

The petitioner made ongoing and frequent inquiries with his Attorney has to the status and any progress of his wrongful termination case, on every communication the petitioner's Attorney assured the petitioner that the wrongful termination case was being properly handled and going well, the petitioner relied on his attorney's representation from April 2012 until October 2015. On or about October 27, 2015 the petitioner's Attorney passed away, a few days before his attorney passed away the petitioner spoke by telephone to his attorney, during that telephone conversation the petitioner's attorney told the petitioner that he would be entering the hospital for a few days for some procedures and after his release from hospital he would be able to do a much better job on handling the petitioner's wrongful termination case, during that conversation the petitioner's attorney told the petitioner that he "the attorney" had been suffering with health problems and those health problems had been slowing him down and effecting his ability to work on the petitioner's case, but while in hospital he would have procedures that would help him get better "improve his health" and he would be able to work better.

After the sudden and unexpected death of his attorney the petitioner was upset, and disorientated about the death of his attorney, as a result of his attorney's death the petitioner was experiencing anxiety and emotional turmoil, the petitioner spoke with his attorney's office

about the death and about the case and the office instructed the petitioner that soon the court would authorize the release of his files from the office and he could pick up his files.

In January of 2016 the petitioner filed a new action in the district court as mandamus see *Everson v. Semple, Comm'r of Correction, Docket No. 3:16-cv-77 (RNC) Connecticut District Court*, the petitioner intended the mandamus to be given the same docket number as the first case 3:04-cv-387(RNC), citing Title 28 U.S. Code section 1651(a) all writs act to address and vacate the final judgment in the case, the petitioner also requested an attorney be appointed, the court assigned the new action a new docket number, the new action was dismissed citing "res judicata", and the request for an attorney was denied, the petitioner appealed the trial court's decision see *Everson v. Semple, Docket No. 16-3381cv Second Circuit Court of Appeals*, the court of appeals upheld the trial court's decision, the petitioner filed a Writ of Certiorari that was denied on April 16 2018 , the petitioner filed a petition for rehearing that was denied on June 11, 2018. On July 27 2018 the petitioner/plaintiff filed a Motion for Relief from a Final Judgment and Order under the first docket number, 3:04 cv-387(RNC) that motion was denied, the petitioner appealed the decision of the trial court the Court of Appeals upheld the trial court's decision citing; Appeal "lacks an arguable basis In law or fact", the petitioner filed a motion for panel reconsideration and reconsideration En banc, that was denied; the Petitioner filed a Petition for Writ of Certiorari with this court it was denied. This Petition for Rehearing followed.

GROUNDS FOR PETITION OF REHEARING

The petitioner here was appealing the district court's denial of his motion for relief from final judgment pursuant to Federal Rules of Civil Procedure, Rule: 60(b)(6). The Court of Appeals dismissed the petitioner's appeal citing *Neitzke v. Williams*, 490 U.S. 319, 325 ((1989)) "appeal lacks an arguable basis in law or fact". The decision of the Court of Appeals in this case violates and is in opposition to the First Amendment right to petition the government for a redress of grievances and the Fifth and Fourteenth Amendments right No person shall be deprived of life liberty or property without due process and the Fourteenth Amendment right All persons born or naturalized in the United States and subject to the jurisdiction thereof; No state shall deny to any person within its jurisdiction the equal protection of the law. In *Denton v. Hernandez*, 504 U.S. 25 (1992) this court outlined a correct application of *Neitzke v. Wiliams*, at 325. In this case the Court of Appeals rendered an invalid application of 28 U.S. Code section 1915 (e)(2)(B) (i) and (ii);(invalid as the Court of Appeal dismissal of the petitioner's appeal opposes this court's standard for properly applying *Neitzke v Williams*) as it is outlined in (*Denton v. Hernandez*, 504 U.S. 25, at 30 (1992), *Denton* "a district court could dismiss a complaint as frivolous only If the allegations conflicted with judicially noticeable facts" and *Denton* at 33 "An in Forma pauperis complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely,without any factual development.."). The decision of the Court of Appeals denies the petitioner's right to access the courts protected by the First, Fifth, and Fourteenth Amendments'. The Court of Appeals invalid (as it opposes *Denton*) application of 28 U.S. Code section 1915 (e) (2)(B)(i) "Frivolous" and (ii) "Fails to state a claim on which relief can

be granted”, conjoined with Federal Rules of Civil Procedure, Rule 12 (b)(6) “failure to state a claim upon which relief can be granted” as it specifically applies to pro se litigants who are proceeding “in forma pauperis”, and does not apply to litigants who pay docket fees, violates and is in opposition to the 1st , 5th , and 14th Amendments right of access to the courts,

Right to Petition:

The underlying claim made a Prima facie case under Title 42 in the district court and the relief requested in the Rule 60 (b)(6) motion did exist, “the 60(b)(6) sort to allow an appeal of the decision of the underlying Title 42 claim”. The decision of the Appeals Court denies the petitioner of his right of “access to the court”, 1st Amendment, “Right to Petition” regarding the fundamental interest “his employment”, As the underlying claim was originally filed under Title 42 claims, as this court stated in: *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 at 513 (1972) (“That right, [the right of access to the courts] is part of the right of Petition protected by the First Amendment”) also see *Sure-Tan Inc., v. NLRB*, 467 U.S. 883, at 897 (1984)”The Court stressed that the right of access the courts for redress of wrongs is an aspect of the First Amendment right to petition the government...” The court in “*Sure-Tan*” was citing/quoting *Bill Johnson’s Restaurants, v. NLRB*, 461 U.S. 731, at 741 (1983). Moreover, because this is a case of a decision in a lawsuit being prevented from being appealed see *Chamber v. Baltimore and Ohio R.R.*, 207 U.S. 142, at 148 (1907) (under Article IV section 2 of the U.S. Constitution, “The Right to Sue and Defend is fundamental and conservative of all other rights”).

Due Process:

The appeals courts application of the code denies the petitioner's right to "access the court", 5th Amendment, "right to due process" because the district court denied the petitioner motion for relief from final judgment filed pursuant to Federal Rules of Civil Procedure Rule 60 (b) (6) without first conducting a hearing (allowing the petitioner to be heard) and for the court to assess the facts, evidence and composite circumstance and reason for filing his 60 (b)(6) motion, and because the petitioner was denied the ability to appeal the District Court's decision on his motion, See *Christopher v. Harbury*, 536 U.S. 403 at 415 (2002) n. 12 ("Recognition that the right to access the courts is ancillary to the underlying claim a plaintiff cannot be shutout of court) also *Christopher* at 415 (right of access to courts is grounded in the 5th and 14th Amendment Due Process Clause). The petitioners underlying claim was concerning his employment and employment is a fundamental interest and the original lawsuit was filed under Title 42 U.S. Code section 1983 and Title 42 cases must be resolved by the Judiciary; also see (*Boddie v. Connecticut*, 401 U.S. 371 at 374 (1971) ("the right to due process reflects a fundamental value in our American constitutional system and Due Process does prohibit denying access to the court solely because of inability to pay fees") *Boddie* at 377, "due process at a minimum requires, persons forced to settle their claims of right and duty through the judicial process, must be given a meaningful opportunity to be heard" *Boddie* at 383-84, (access to the court is a Substantive right under the Due Process Clause)) also See *Erwin Chemerinsky, Constitutional Law: Principles and Policies* 419-420 (1997) ("Right of Access is grounded in 5th and 14th Amendment, Right to Due Process").

Equal Protection

The appeals courts invalid application of the code 1915 (e)(2)(B)(i) and (ii) violates the petitioner's 14th Amendment right to equal protection of the law because the application of the code denies the petitioner's right to access the court by denying the right to a hearing and his right to appeal the District Court's decision of both his 60(b)(6) motion and effectively denying his right to appellate review of the underlying Title 42 Claim if/because the litigant is now proceeding "in forma pauperis" contrary to a litigant who has the ability to pay the docket fee is allowed to enjoy his right to a hearing and right to an appeal/enjoy his right of access to the court, and the petitioner's right to access the court is protected by the 1st, 5th and 14th Amendments. *Boddie at* 385 "The reach of the Equal Protection Clause is not definable with mathematical precision , But in spite of doubts by some , as it has been construed, rather definite guidelines have been developed: race is one, religion is another and poverty is still another" (*Boddie v. Connecticut, at* 384 "we held that requiring indigents to pay the filing fees before a writ of habeas corpus could be considered in state court was invalid under the Equal Protection Clause, Here, More affluent can abstain a divorce, the indigent cannot"; *Boddie at* 388-89 "this case presents a classic problem of equal protection of the laws. The question that the court treats exclusively as one of due process inevitable implicates considerations of both due process and equal protection. Certainly, there is the issue of a hearing, a matter for analysis under The Due Process Clause. But it does not deny a hearing to everyone in these circumstances; it denies it only to people who fail to pay certain fees. The validity of this partial denial, or differentiation in treatment, can be tested as well under the Equal Protection Clause", *Boddie at* 89 "Courts are the central dispute-settling institution in our society,

They are bound to do equal justice under law to rich and poor alike. They fail to perform their function in accordance with the Equal Protection Clause if they shut their doors to diligent plaintiffs altogether. Where money determines not merely "the kind of trial a man gets," but whether he gets into court at all, the great principle of equal protection becomes a mockery".) The Court of Appeals decision to allow the District Courts to deny a litigants motion filed pursuant to Federal Rules of Civil Procedure, Rule 60 (b) (6) without first conducting a hearing and without first accessing the litigant's facts, circumstance and evidence, and be denied appellate review, because the petitioner was proceeding "in forma pauperis" contrary to a litigant who has the ability to pay the docket fee is allowed to have a hearing, and appellate review, in doing so the application of Rule 60 (b)(6) violated and is in opposition to the 14th Amendment, right to equal protection of the law, *see (Williams v. Shaffer, 385 U.S. 1037 at 1039 (1967) cert denied,* (opinion of Justice Douglas and Chief Justice "the ability to obtain a hearing is thus made to turn upon the tenants wealth, On numerous occasions this court has struck down financial limitations on the ability to obtain judicial review, we have recognized that the promise of equal justice for all would be an empty phrase for the poor, if the ability to obtain judicial relief were made to turn on the length of a person's purse, the equal protection clause of the 14th Amendment protection extend to civil matters, I can see no more justification for denying an indigent a hearing solely because of his poverty than for denying an indigent the right to appeal" *Page 385 U.S. 1037, 1041* Justice Douglas and Chief Justice "This court of course does not sit to cure social ills that beset the country , But when we are faced with a statute that apparently violates the Equal Protection Clause by patently discriminating against the poor and thereby worsening their already sorry plight, we should address ourselves to it,

I would grant Certiorari")) by not allowing or conducting a hearing in the district court to give the Petitioner an opportunity to present his facts and evidence to be assessed by the court the district court is denying a litigant's right to a hearing and not allowing any appellate review of the district courts decisions, that in itself is denying the litigant's right to "access the courts" "right to petition" and "right to due process" and "right to equal protection of the law" that is enjoyed and extended to any litigant who has the ability to pay the docket fee.

Fundamental interest and Fundamental/ Substantive Right as the underlying litigation

During the course of the Petitioners' employment the petition was treated differently and more harsh and unfavorable than similarly situation employees outside of his protected class, and this more harsh and unfavorable treatment resulted in the Petitioner being terminated from his employment, this was the basis for this case under title 42 U.S. Code section 1983, while this case was proceeding in the district court at summary judgment the petitioners' key evidence necessary to prove his case was omitted from the examination process of the summary judgment. In this case while this petitioner was incarcerated the petitioner was not allowed to receive his legal mail sent to him by the court of appeals the petitioner was, "effectively unable to monitor or protect his appeal". The petitioner here filed a motion under Federal Rules of Civil Procedure, Pursuant to Rule 60 (b)(6), this motion was denied by the district court without first conducting a hearing to assess the petitioner' basis, facts, evidence and circumstances of the petitioners' motion. It is a fundamental and Substantive right for the petitioner to be treated the same by the Government as his non-African American counterparts/ similarly situated individuals, It is a fundamental right for an indigent litigant to be treated the same as a litigant of wealth and financial means, employment is a fundamental interest the same as

marriage, housing, education. Title 42 U.S. Code section 1983 claims must be resolved in court by judicial process through the integration of equal protection and due process. The 1st Amendment rights are fundamental and protect against financial barriers and access of indigent litigants to the court. Being denied a hearing is a matter of Due Process and Equal Protection. 1st Amendment right to petition extends to the judiciary. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803) "that the very essence of civil liberty certainly consist in the right of every individual to claim the protection of the laws, whenever he receives an injury". Blacks law dictionary tenth edition p. 1520 defines "substantive right": An essential right that potentially effects the outcome of a lawsuit and is capable of legal enforcement and protection. *Chambers v. Baltimore and Ohio R.R.*, 207 U.S. 142 148 (1907), "The right to sue and defend is fundamental and conservative of all other rights", *Sure-Tan Inc., v. NLRB*, 467 U.S. 883 at 897 (1984) "the right to petition for remedy of legally cognizable wrongs".

CONCLUSION

The petition for rehearing should be granted.

Respectfully submitted,



Christopher Everson

Christopher Everson,

Date:

CERTIFICATE OF COMPLIANCE

CHRISTOPHER EVERSON, Petitioner

v.

**THERESA LANTZ,
Commissioner of Correction, et, al, Respondents**

As required by Supreme Court Rule 33.2(b), I certify that the petition for rehearing contains 15 pages or less, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 5, 2020


Christopher Everson